

REMARKS

In this response, claims 54, 55, and 58 have been canceled, and new claims 59-61 added. Thus, claims 22, 23, 29-35, 56, 57, and 59-61 are now pending in this application. The Office Action issued by the Examiner has been carefully considered.

Claims 54, 55, and 58 have been canceled and their limitations combined with the limitations of independent claim 22 from which they depend in order to provide, respectively, new independent claims 59-61. This has been done solely to put these claims into independent form, and no narrowing of coverage is intended.

REJECTIONS UNDER 35 U.S.C. § 103

Claims 22-23, 29-35, and 54-58 have been rejected under 35 U.S.C. § 103(a) over Johnson et al. (5,712,989 hereinafter Johnson) in view of Official Notice.

Applicant appreciates the Examiner's further consideration of the Johnson reference, and the concurrence by the Examiner that Johnson alone does not fully disclose Applicant's claim 22. The Examiner is kindly requested to note that claim 22 recites "a store builder suitably adapted to, in response to a request from a store owner, create[s] a store managed by the host [and operated by a host owner] for the store owner." Claim 22 further recites that the store owner's store provides "a consumer with access . . . to at least one merchandise item selected from the inventory."

Johnson describes that all products are purchased by the customer (using local computer 40) from the Distributor (using host computer 10). The only exception is for products of the type 05 that are not sourced by the Distributor, for which vendor 39 sells the product directly to the customer (i.e., without going through the Distributor) (5:45-48).

Thus, the Examiner could only properly argue that either the Distributor or vendor 39 teaches a “store owner” as these are the only entities that present a consumer with access to a merchandise item for a potential transaction with the store. If the Distributor is a store owner, then Johnson must somewhere describe that the Distributor makes “a request” to create a store operated by a host owner. However, host computer 10 is operated by the Distributor. The Distributor cannot logically make a request to itself to create a store. Also, Johnson does not describe any request made by the Distributor to anyone that could be interpreted as a request to create a store. So, Johnson does not teach or suggest that the Distributor makes any request to create a store.

The only entity that Johnson describes as providing information to host computer 10 or to the Distributor is the Customer Service Representative (CSR), which is located at the customer’s site (2:65-67). The CSR uses local computer 40 to make purchase requests to host computer 10. This purchase request is not a request by a store owner to create a store at least because the customer is not a store owner. So, Johnson does not teach or suggest any request from someone other than the customer, who cannot be the store owner, that could reasonably be interpreted as a request to create a store.

On the other hand, if the Examiner argues that vendor 39 teaches a “store owner”, then Johnson must somewhere describe that vendor 39 makes a request to create a store. However, Johnson describes that the Distributor operates the host computer 10, and does not describe vendor 39 as making any requests to the Distributor. Instead, the customer purchases goods directly from vendor 39. Thus, Johnson does not describe that vendor 39 makes any request to the Distributor or anyone else to create a store.

The Examiner refers to Johnson’s Table V as being a store that has been created. However, Table V is only described as being created by the CSR of the customer using local computer 40 (10: 39-50). Johnson makes clear that it is the customer (CSR) that creates Table V (and the other tables discussed by Johnson). Specifically, Johnson states that the “programs associated with the data screens enable the CSR to display and modify the contents of various

tables associated with particular data screens. These tables [including Table V] make up local database 50 [at local computer 40]" (6:26-29). Any action by the customer (CSR) on local computer 40 cannot be a request by a store owner to create a store as the customer is not a store owner.

The Examiner has argued that vendors 37 and 38 are store owners. Yet, Johnson only describes that vendors 37 and 38 provide items for the Distributor's sale to the customer. (3:62-65). Vendors 37 and 38 are described by Johnson as only being suppliers. Johnson does not teach that vendor 37 or 38 is a store owner as Johnson teaches that the Distributor enters the sales transaction with the Customer. The Customer is not described as viewing vendor 37 or 38 as the seller--instead Johnson describes vendor 39 for the situation where the Customer is entering a sales transaction with a vendor.

However, for the sake of argument, even if vendor 37 or 38 were considered to be a store owner, Johnson does not describe vendor 37 or 38 as making any request to host computer 10 to create a store. Instead, as discussed above, Johnson only describes its requisitioning system as receiving information from the customer (CSR). Even if the CSR provides information about vendor 37 or 38, this comes from the customer and is not a request from a store owner.

In light of the above, the Examiner has respectfully failed to show Johnson as teaching any store owner that makes a request to create a store. Further, no Official Notice taken by the Examiner relates to such a request. Therefore, even with multiple instances of Official Notice, a gap remains un-filled and no factual basis or argument is presented by the Examiner showing support for a store owner making a request to create a store. Accordingly, this obviousness rejection of claim 22 should be withdrawn.

Applicant also respectfully traverses all instances of the Examiner's reliance on Official Notice here as going too far. In particular, MPEP 2144.03, states that it "is never appropriate to rely solely on "common knowledge" in the art without evidentiary support in the record, as the principal evidence upon which a rejection was based." Here, since a new type of rejection (i.e., obviousness) has first been made in this Office Action, and the only new basis for the rejection is

the Official Notice (in that the Johnson reference was previously relied on in the prior anticipation rejection), Applicant respectfully submits that Official Notice is improperly being relied upon here.

The points of Official Notice relied upon by the Examiner here are not mere peripheral issues appropriate for gap-filling. Instead, these are the very deficiencies of Johnson that the Examiner is attempting to gap-fill by Official Notice--no other secondary art has been cited to satisfy these numerous deficiencies of Johnson. Applicant respectfully submits that Official Notice is not proper here, and requests that the Examiner provide documentary evidence to support these assertions so that Applicant has a fair opportunity to provide appropriate rebuttal arguments.

In particular, it is not well known that a plurality of distributors describe, record, or mark items sold in the context of an electronic store. Further, it is not well known to assign a task in the context of an electronic store.

Also, Applicant respectfully submits that the use of multiple URLs was not old and well known prior to the filing date of Applicant's specification. Finally, dividing of payments to all entities involved is not well known in the context of an electronic store.

Applicant requests that the Examiner provide documentary evidence to support the above assertions as required by MPEP 2144.03. Further, as discussed above, a secondary reference should be provided as the use of Official Notice alone is not proper in this rejection.

NEW CLAIMS

Applicant's new claim 59 recites that "the store builder is further suitably adapted to, in response to a request from a second store owner, create a second store managed by the host for the second store owner, each of the first and second stores to be customized by the respective first and second store owners to offer products for sale by e-commerce." Johnson only

describes purchase requisition orders sent by a customer to the Distributor. Johnson does not even contemplate a requisition system that creates or operates a second store managed on host computer 10 for a second store owner. Thus, Johnson does not teach or suggest to “create a create a second store managed by the host for the second store owner.”

Applicant’s new claim 60 recites “presenting to the store owner a plurality of store types for selection in building the store.” As discussed above, Johnson describes that the Distributor operates host computer 10, and that the requisition system permits the CSR at the customer location to edit tables of data. Johnson does not describe the system as presenting “a plurality of store types for selection in building the store.” Instead, Johnson describes directly entering a requisition process, and information provided to the CSR/customer is related to a specific purchase.

Applicant’s new claim 61 recites that the “host is further suitably adapted so that the operation of the host by the host owner is indiscernible to the consumer.” Johnson describes that a Just-In-Time (JIT) facility 51 includes items located on Customer’s site that are Distributor-owned (4:25-28). When the Customer makes a purchase from the Distributor by communicating with host computer 10, the Customer CSR clearly is aware that the Distributor is operating the host computer 10. Thus, Johnson does not teach or suggest that “operation of the host by the host owner is indiscernible to the consumer.”

CONCLUSION

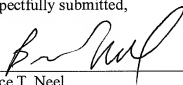
Applicant’s other claims depend, directly or indirectly, from independent claim 22 and are believed allowable for at least the reasons discussed above.

In view of the above, Applicant respectfully requests the reconsideration of this application and the allowance of all pending claims. It is respectfully submitted that the Examiner’s rejections have been successfully traversed and that the application is now in order for allowance. Applicant believes that the Examiner’s other arguments not discussed above are

moot in light of the above arguments, but reserves the right to later address these arguments. Accordingly, reconsideration of the application and allowance thereof is courteously solicited.

The Commissioner is authorized to charge any additional fees associated with this filing, or credit any overpayment, to Deposit Account No. 50-2638. If an extension of time is required, this should be considered a petition therefor.

Respectfully submitted,



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